PUBLIC PROSECUTOR

v.

NAGESWARI A/P NAGARATNAM

HIGH COURT MALAYA, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL REVISION NO. 43-7-94]
2 AUGUST 1994

CRIMINAL LAW & PROCEDURE: Insanity - Accused pleaded guilty to charge of cheating - Section 420 Penal Code - State of accused's mind at time of committing offence - Medical report from Hospital Bahagia, Ulu Kinta - Issue of insanity - Whether Magistrate can accept plea of guilty - Validity of plea of guilty - Whether Magistrate should state finding specifically that accused committed act or not - Section 347 CPC - Conviction to be recorded for pleading guilty - Magistrate bound over accused after accepting plea without complying with s. 347 CPC - Whether such an error, omission or irregularity has occasioned a serious failure of justice - Section 422 CPC - Criminal Procedure Code, ss. 173(a)(b), 294, 325, 342(iii), 343(iii), 347, 348(i) - Evidence Act 1950, s. 106 - Penal Code, s. 420.

In this case, the accused pleaded guilty to an offence under s. 420 of the Penal Code and understood the nature and consequences of her plea. Prior to that date, the case was adjourned several times pending the report from Hospital Bahagia, Ulu Kinta. The report from the said Hospital *inter alia* showed that the accused had a relapse of Schizophrenis at the time of committing the offence. The issue in this revisionary proceedings was the accused's mental disorder and acceptance by the Magistrate of the plea of guilty by the accused.

Held:

[1] The legislature in enacting s. 347 of the CPC must have intended that an order of acquittal on the ground of mental disorder should be made after a full fledged trial.

[2] In the present case, the learned Magistrate who accepted the plea of guilty of the accused and after convicting bound over the accused without adverting to s. 347 of the CPC must surely have erred in law. The error, omission or irregularity has occasioned a serious failure of justice and s. 422 of the CPC cannot be invoked to remedy the embarrassing situation.

[Order of Magistrate set aside. Case remitted back to same Magistrate to proceed with trial].

Cases referred to:
Lee Weng Tuck & Anor. v. Public Prosecutor [1989] 2 CLJ 120/[1989] 2 MLJ 143 ***(refd)***
Pendakwa Raya v. Zainal Abidin bin Mohd. Zaid [1993] 1 CLJ 147 ***(not foll)***

Legislation referred to:
Criminal Procedure Code, ss. 173(a), (b), 294, 325, 342(iii), 343(iii), 347, 348(i), 422
Evidence Act 1950, s. 106
Firearms Act 1960, ss. 39, 43
Penal Code, ss. 84, 420

For the public prosecutor - Hashim Hamzah, DPP
For the accused - Mohd. Fadhir bin Haron, Legal Aid Bureau, Ipoh

JUDGMENT

Haji Abdul Malik Bin Haji Ishak JC:

The accused was initially charged for an offence under s. 420 of the Penal Code and after several adjournments pending the report from Hospital Bahagia, Ulu Kinta, Perak ("the said hospital") under s. 342(iii) of the Criminal Procedure Code (FMS Cap 6) ("CPC"), the case was finally fixed for hearing before the Magistrate's Court, Taiping, Perak on 4 May 1994. On that date, the charge was read and explained to the accused whereupon she pleaded guilty to the charge and understood the nature and consequences of her plea. The facts of the case was tendered by the police prosecuting officer in the form of a written statement (exhibit P1). Those facts as admitted by the accused showed that the accused had gone to a jewellery shop and requested to see two gold bangles and upon holding the same, she left the said shop without paying for them. The proprietor of the jewellery shop gave chase and managed to detain her. Upon those facts as admitted by the accused, the learned Magistrate duly convicted her. An officer from the Legal Aid Bureau mitigated on her behalf. The mitigation advanced on her behalf principally revolved on the issue of insanity. This must have swayed the learned Magistrate for he subsequently ordered the accused to be bound over in the sum of RM1,500 for a period of two years under s. 294 of the CPC.

The learned Deputy Public Prosecutor disagreed with the way the learned Magistrate handled the case and fortunately by letter the learned Magistrate requested me to exercise my revisionary power under s. 325 of the CPC. It was argued before me that the report from the said hospital dated 24 January 1994 showed that the accused had a relapse of Schizophrenia at the time of committing the offence; that she knew what she was doing but she did not know that it was either wrong or contrary to law. This meant that she was insane at the time of doing the act complained of. In fact, there was evidence of previous insanity suffered by the accused - a very pertinent and relevant evidence that would shed light on the state of the accused's mind at the time of doing the act. Thus, with the mental background of the accused, the learned Magistrate should not, so argued that learned Deputy Public Prosecutor, have accepted the plea of guilty by the accused.

The record of proceedings showed the care taken by the learned Magistrate in ensuring the validity of the plea of guilty as explained in *Lee Weng Tuck & Anor. v. Public Prosecutor* [1989] 2 MLJ 143 SC. That the learned Magistrate had compiled with s. 173(a) and (b) of the CPC was beyond dispute. But when the learned Magistrate proceeded to accept the plea of guilty by the accused knowing fully well the adverse report from the said hospital, it was an exercise calculated to undermine the established principles in criminal law, namely, on a plea of guilty, the accused must be **convicted and sentenced accordingly.** Since the learned Magistrate took cognizance of the report from the said hospital, by virtue of s. 347 of the CPC, the judgment of the learned Magistrate should be one of acquittal on the ground of mental disorder. And further the learned Magistrate must make a finding as to whether the accused committed the act or not. This was clearly not done by the learned Magistrate.

Section 347 of the CPC reads thus:

> Whenever any person is acquitted upon the ground that at the time at which he is alleged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

And thereafter, the learned Magistrate, if he so minded, could caution and discharge the accused provided that the learned Magistrate in his discretion considered that the offence was not serious and it was safe to release the accused as the accused would not injure herself or any other person (s. 348(i) of the CPC especially the proviso thereto.)

At this juncture, it is pertinent to reproduce below the relevant parts of the report from the said hospital.

> Adalah didapati bahawa beliau mempunyai sejarah sakit jiwa sejak tahun 1992. Beliau pernah dimasukkan ke Unit Psikiatri Hospital Taiping sebanyak dua kali untuk rawatan. Beliau juga sering tidak mengikuti rawatan secara teratur.
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> Beliau menghidapi penyakit "Skizofrenia" iaitu sejenis penyakit jiwa yang digejalai oleh gangguan pemikiran, emosi dan tingkahlaku serta kemerosotan dalam fungsi sosial dan pekerjaan.
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> Pada pendapat kami, penama telah berada di dalam keadaan tidak siuman (relapse) ketika melakukan jenayah yang tersebut. Beliau mungkin menyedari sifat perbuatannya, tetapi beliau tidak mengetahui bahawa perbuatannya itu adalah salah dan bertentangan dengan undang-undang.
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> Kini beliau adalah layak untuk dihadapkan ke Mahkamah untuk membela diri.

The report from the said hospital was in fact a certificate receivable in evidence under s. 343(iii) of the CPC.

Now, mental insanity is set out in s. 84 of the Penal Code. The section reads as follows:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

It is now trite law that the accused must prove insanity (s. 106 of the Evidence Act). The burden is light, not higher than that which rests upon a party in civil proceedings. That burden may be discharged on the evidence led by the prosecution. And since this case went before the learned Magistrate, as a sole fact finder, the learned Magistrate must decide for himself whether or not the accused was insane within the meaning of s. 84 of the Penal Code. No eminent doctor in the world can decide that crucial question for the learned Magistrate, but the doctor as an expert witness may assist the learned Magistrate in arriving at this fact finding mission. What is crucial for the accused to show would only be two things. Firstly, that the accused did not know what he was doing. Secondly, that the accused knew what he was doing but did not know that it was either wrong or contrary to law. The report from the said hospital would clearly be relevant evidence for the accused to rely upon in order to establish the insanity of the accused at the time of the commission of the crime.

An order of acquittal on the ground of insanity (s. 347 of the CPC) and the safe custody of an accused person acquitted thereof by the High Court or the Sessions Court as the case may be or as in the present case where the Magistrate's Court handled the case (s. 348(i) of the CPC) must mean that the case was fully tried by adducing evidence through witnesses on both sides. An order of acquittal must follow after a trial, whereas on pleading guilty there is no need for a trial to be conducted and a conviction would be recorded as a matter of course.

I am aware of the decision of his Lordship Mahadev Shankar in P*endakwa Raya v. Zainal Abidin bin Mohd. Zaid* [1993] 1 CLJ, where his Lordship held a contrary view

and applied s. 422 of the CPC to remedy the situation of the learned Magistrate who had accepted a plea of guilty under s. 39 read with s. 43 of the Firearms Act 1960 (Revised Act No. 206) and placed the accused to the care of his bailor for safe custody pending the decision of the Ruler of the State.

I am of the considered view that the legislature in enacting s. 347 of the CPC must have intended that an order of acquittal on the ground of mental disorder should be made after a full fledged trial. No short cut is allowed and any short cut like the present case where the accused pleaded guilty and the learned Magistrate forthwith accepted the plea and after convicting the accused bound over the accused without adverting to s. 347 of the CPC must surely be wrong and such an error, omission or irregularity has occasioned a serious failure of justice. Section 422 of the CPC cannot be invoked to remedy the embarrassing situation.

For the reasons set out above, and in the exercise of my revisionary powers, I set aside the order of the learned Magistrate. The case is remitted back to the same Magistrate for him to proceed with the trial and thereafter deal with the matter in accordance with ss. 347 and 348 of the CPC. For the sake of expediency, the case is fixed for mention before the same Magistrate on 8 August 1994 and, in the meantime, the accused is placed on bond in the sum of RM500 (undeposited) to ensure her attendance in the Magistrate's Court, Taiping, Perak. I am told that her mother has since signed that bond.